

PRESIDENT. I am clear as to the intention of the testator ; and what authority to limit the general term of bonds to such as are personal ?

On the 13th February 1789, "The Lords decerned in favour of George Waddell ;" adhering to the interlocutor of Lord Swinton.

For Waddell, pursuer,—M. Ross. *Alt.* R. Blair.

Diss. as to adjudications, Swinton.

Diss. as to heritable bonds, Swinton, Hailes, Dunsinnan, President.

1789. February 20. MARY FOREST against LIEUTENANT CHRISTOPHER FUNSTON.

FORUM COMPETENS.

Holding a military office in Scotland, without actual residence, does not create a domicile.

[*Fac. Coll. X. 112 ; Dict. 4823.*]

HAILES. The defender is master-gunner at Blackness Castle ; this is not merely a name entitling him to a salary, but it is a stationary office. He has military stores committed to his charge, and he has an apartment, such as it is, in the garrison ; and if his domicile be not there, we know not where it is. An execution against him, at his domicile in Blackness Castle, would be a proper one. He says that his domicile is at Strathbane in Ireland : but I have no evidence of this ; and, until I am better informed, I must presume that his *sedes rerum et fortunarum* is at Blackness, and that he has a temporary leave of absence from the Commander-in-Chief, which permits him to be elsewhere than in the place where his duty fixes him.

JUSTICE-CLERK. It matters not whether Lieutenant Funston be absent with or without leave ; he is a foreigner, and has no residence in this country.

ESK GROVE. There is no law which says that a man, being an officer, and having an office and a house annexed to it in Scotland, will, although a foreigner, be amenable to the jurisdiction of Scottish courts. The governor of Fort Augustus has a very good house there, and yet no declarator of marriage brought against him in Scotland would be of any avail. [To make his *species facti* applicable to the purpose, he should have put the case of the deputy-governor, who does reside, instead of that of the governor, who is understood to draw a mere pension without any obligation to residence : if governor Trapand be not amenable to the courts in this country *ratione domicilii*, I know not what other domicile he can have : he will be like Sir Thomas Wallace, who, as the Court has found, is amenable to no court for adultery.]

On the 20th February 1789, "The Lords remitted to the commissaries to dismiss the action."

Act. J. Dickson. *Alt.* Edw. M'Cormick.

Reporter, Dreghorn.